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MARY ANN SMITH Deputy Commissioner

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3 4 5 6 7 8	Assistant Chief Counsel SAMUEL J. PARK (State Bar No. 293902) Counsel Department of Financial Protection and Innovation 320 West 4th Street, Suite 750 Los Angeles, California 90013 Telephone: (213) 576-7683 Facsimile: (213) 576-7181  Attorneys for Complainant  BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION		
9	OF THE STATE OF CALIFORNIA		
10	In the Matter of:  NMLS NO.: 1931698		
11	THE COMMISSIONER OF FINANCIAL STATEMENT OF ISSUES PROTECTION AND INNOVATION,		
12	Complainant,		
13	v. )		
14	DERRICK TRENTON BREW,		
15	Respondent.		
16	)		
17			
18	The Commissioner of Financial Protection and Innovation (Commissioner) is informed and		
19	believes, and based upon such information and belief, alleges and charges Respondent as follows:		
20	I.		
21	<u>Jurisdiction</u>		
22	1. The Commissioner has jurisdiction over the licensing and regulation of persons		
23	engaged in the business of making or brokering residential mortgage loans, including mortgage loan		
24	originators, under the California Financing Law (CFL) (Fin. Code, § 22000 et seq.). The		
25	Commissioner also has jurisdiction over the licensing and regulation of persons engaged in the		

On February 3, 2020, Respondent Derrick Trenton Brew (Brew) applied to the

business of making or servicing residential mortgage loans, including mortgage loan originators,

under the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.).

Commissioner for a mortgage loan originator (MLO) license under the CFL and CRMLA.

3. The Commissioner brings this action to deny the issuance of an MLO license to Brew under Financial Code sections 22109.1 and 50141 because Brew: (1) was convicted of two felonies involving an act of fraud, dishonesty, a breach of trust, or money laundering and (2) has not demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that he will operate honestly, fairly, and efficiently as an MLO.

#### II.

## **Statement of Facts**

- 4. To become licensed by the Commissioner as an MLO, an individual must submit a uniform application form (known as the MU2 or MU4 form) through the Nationwide Mortgage Licensing System and Registry (NMLS).
- 5. On February 3, 2020, Brew applied for an MLO license by filing a Form MU4 through NMLS. His application was sponsored by a lender licensed under the CFL and CRMLA.
- 6. Form MU4 question (A)(1) asked: "Have you filed a personal bankruptcy petition or been the subject of an involuntary bankruptcy petition within the past 10 years?"
- 7. Brew answered "Yes" to question (A)(1). In the event explanation for question (A)(1), Brew stated that in 2012 he filed for chapter 7 bankruptcy because of financial and employment difficulties stemming from his 2010 felony conviction. Brew provided supporting documents for his explanation.
- 8. Form MU4 question (F)(1) asked: "Have you ever been convicted of or pled guilty or nolo contendere ('no contest') . . . to any felony?"
- 9. Brew answered "Yes" to question (F)(1). In the event explanation for question (F)(1), Brew stated that in 2006 he engaged in a check-kiting scheme and was convicted in 2010 after pleading guilty to "two checks." Brew provided supporting documents for his explanation, including the indictment, which was filed on April 1, 2009; the judgment, which was filed on January 12, 2010; and an unsigned, undated plea agreement. The first page of the indictment and judgment, however, were missing.

- 10. On February 6, 19, and 27, 2020, Brew filed amended Form MU4s with minor clerical changes.
- 11. On March 25, 2020, the Commissioner placed a license item on Brew's NMLS account, noting that Brew had answered "Yes" to Form MU4 question (F)(1) and requesting that he upload applicable documents relating to payment of the restitution ordered by the court.
- 12. On March 25, 2020, Brew filed an amended Form MU4 in which he uploaded a copy of the case docket showing monthly restitution payments since 2010.
- 13. On April 14 and May 22, 2020, Brew filed amended Form MU4s with minor clerical changes.
- 14. Records obtained from Brew and the Commissioner's investigation show that on October 6, 2009, in the U.S. District Court for the Eastern District of Missouri, Brew pleaded guilty to two counts of felony bank fraud in violation of title 18 United States Code sections 1344 and 2. The indictment, filed on April 1, 2009, contained eight counts. A superseding indictment, filed on June 25, 2009, contained 13 counts.
- 15. Records obtained from Brew and the Commissioner's investigation show that Brew voluntarily filed for chapter 7 bankruptcy on June 21, 2012, in the U.S. Bankruptcy Court for the Eastern District of Missouri and received a discharge of his debts on September 12, 2012.

#### III.

### **Felony Convictions**

16. The Commissioner "shall deny" an application for an MLO license unless he makes, at a minimum, specified findings, including that the applicant has not been convicted of, or pleaded guilty or no contest to, a felony during the seven-year period preceding the date of the application, or at any time preceding the date of the application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. (Fin. Code, §§ 22109.1, subd. (a)(2), 50141, subd. (a)(2).)

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- 17. As described in paragraph 14, Brew was convicted in 2009 of two counts of felony bank fraud in violation of title 18 United States Code sections 1344 and 2. Each felony involved an act of fraud and dishonesty. (See Black's Law Dict. (7th ed. 1999) p. 670 [defining fraud as "[a] knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment"].)
- 18. Accordingly, before the date of his application, Brew was convicted of two felonies involving an act of fraud, dishonesty, a breach of trust, or money laundering. Under Financial Code sections 22109.1, subdivision (a)(2), and 50141, subdivision (a)(2), the Commissioner must deny Brew's application.

#### IV.

# Financial Responsibility, Character, and General Fitness

- 19. The Commissioner "shall deny" an application for an MLO license unless he makes, at a minimum, specified findings, including that the applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, and efficiently as a mortgage loan originator. (Fin. Code, §§ 22109.1, subd. (a)(3), 50141, subd. (a)(3).) The finding of financial responsibility, character, and general fitness "relates to any matter, personal or professional, that may impact upon an applicant's propensity to operate honestly, fairly, and efficiently" as an MLO. (Cal. Code Regs., tit. 10, § 1950.122.5.2, subd. (a).)
- 20. As described in paragraphs 14 and 17, Brew was convicted in 2009 of two counts of felony bank fraud. Brew's criminal history militates against finding that he has demonstrated the character and general fitness required for licensure as an MLO.
- 21. As described in paragraph 15, Brew voluntarily filed for chapter 7 bankruptcy in 2012 and received a discharge of his debts. Brew's bankruptcy weighs against finding that he has demonstrated the financial responsibility required for licensure as an MLO.

<sup>&</sup>lt;sup>1</sup> Title 18 United States Code section 1344 provides that whoever knowingly executes or attempts to execute a scheme or artifice "to defraud a financial institution" or "to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises" is guilty of a felony.

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22. For all these reasons, Brew has not demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that he will operate honestly, fairly, and efficiently as an MLO. Under Financial Code sections 22109.1, subdivision (a)(3), and 50141, subdivision (a)(3), Brew's application must be denied.

V.

### **Commissioner's Authority to Deny Application**

23. Financial Code section 22109.1, subdivision (a), provides in relevant part:

The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes, at a minimum, the following findings:

. . .

- (2) (A) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing and registration, or at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.
- (B) For purposes of this paragraph, an expunged or pardoned felony conviction shall not require denial of an application. However, the commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when determining the eligibility of an applicant for licensure under this paragraph or paragraph (3).
- (3) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.
- 24. Financial Code section 50141, subdivision (a), provides in relevant part:
  - (a) The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

. . .

(2) (A) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing and registration, or at any time preceding the date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money

1 2	laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.			
3	(B) For purposes of this paragraph, an expunged or pardoned felony conviction shall not require denial of an application. However, the			
4	commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when			
5	determining the eligibility of an applicant for licensure under this paragraph or paragraph (3).			
6	(3) The applicant has demonstrated such financial responsibility,			
7	character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan			
8	originator will operate honestly, fairly, and efficiently within the purposes of this division.			
9	VI.			
10	<u>Prayer</u>			
11	For the foregoing reasons, the Commissioner finds that Derrick Trenton Brew was			
12	convicted of two felonies involving an act of fraud, dishonesty, a breach of trust, or money			
13	laundering before the date of his application for a mortgage loan originator license within the			
14	meaning of Financial Code sections 22109.1, subdivision (a)(2), and 50141, subdivision (a)(2).  The Commissioner also finds that Brew has not demonstrated the financial responsibility,			
15				
16	character, and general fitness required under Financial Code sections 22109.1, subdivision (a)(3),			
17	and 50141, subdivision (a)(3).			
18				
19	Accordingly, the Commissioner must deny Brew's application for a mortgage loan			
20	originator license.			
21	WHEREFORE, IT IS PRAYED that Brew's application for a mortgage loan originator			
22	license be denied.			
23	Dated: January 4, 2021 Los Angeles, California MANUEL P. ALVAREZ			
24	Commissioner of Financial Protection and Innovation			
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26	By: SAMUEL J. PARK Counsel			
27	Enforcement Division			
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